IX. CONCLUSION

164. For the reasons discussed above, we adopt this Report and Order designed to further the mandate of the Children's Television Act that broadcast television achieve its full potential in teaching the nation's children.

X. ORDERING CLAUSES

165. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 4(i) & (j), 303(r), 308, and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i) & (j), 303(r), 308, 403, as amended, and the Children's Television Act of 1990, 47 U.S.C. §§ 303b(a), 303b(b), and 394, Part 73 of the Commission's Rules, 47 C.F.R. Part 73 IS AMENDED as set forth in Appendix B below. The amendments set forth in paragraphs 1, 4, 5, and 6 of Appendix B shall be effective on January 2, 1997, subject to necessary OMB approvals. The amendments set forth in paragraphs 2 and 3 of Appendix B shall take effect on September 1, 1997.

166. IT IS FURTHER ORDERED that the new or modified paperwork requirements contained in this Report and Order (which are subject to approval by the Office of Management and Budget) will go into effect upon OMB approval.

167. IT IS FURTHER ORDERED that the Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Publ. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. 601§ et seq. (1981).

168. IT IS FURTHER ORDERED that this proceeding is terminated.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton

William F. Caton
Acting Secretary

APPENDIX A

ADMINISTRATIVE MATTERS

Paperwork Reduction Act Statement

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 ("PRA"). It has been submitted to the Office of Management and Budget ("OMB") for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, as amended ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA"), 5 U.S.C. § 603, was incorporated in the Notice of Proposed Rule Making in MM Docket No. 93-48 ("NPRM"). The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis ("FRFA")[342] in this Report and Order is as follows:

A. Need for and Objectives of the Rules.

The rulemaking proceeding was initiated to explore ways to implement the Children's Television Act of 1990 ("CTA") more effectively by facilitating broadcasters' compliance with their obligation to air educational and informational programming for children, including programming specifically designed for this purpose, and by furthering the CTA's goal of increasing the amount of educational and informational programming available to children. In ¶¶ 9-13 of the Report and Order, we discuss the importance of children's educational television programming, and in ¶¶ 25-46 and throughout this order, we discuss the basis of our concerns that our prior rules to implement the CTA were not producing a level of performance consistent with the long-term goals of the statute. The rules adopted herein meet these objectives by giving licensees clear, efficient, and fair guidance regarding their children's programming obligation under the CTA. They do this by increasing the flow of programming information to the public to facilitate enforcement of the CTA and improve the functioning of the children's programming marketplace; by adopting a definition of programming that is clearly "specifically designed" to educate and inform children (which we refer to as "core programming") to provide licensees guidance in fulfilling their statutory obligation to air this programming; and by adopting a three-hour processing guideline to

[342]This FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996, Pub. L. 104-121, 110 Stat. 847 (1996) ("CWAAA"). Subtitle II of the CWAAA is The Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA").

facilitate review at renewal time by the Commission, as required by the CTA, of licensees' compliance with the Act.

B. Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis.

There were no comments submitted specifically in response to the IRFA. We have, however, taken into account all issues raised by the public in response to the proposals raised in this proceeding. In certain instances, we have modified the rules adopted in response to those comments.

C. Description and Number of Small Entities to Which the Rules Will Apply.

1. Definition of a "Small Business"

Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Id. According to the SBA's regulations, entities engaged in television broadcasting (Standard Industrial Classification ("SIC") Code 4833 -- Television Broadcasting Stations) may have a maximum of $ 10.5 million in annual receipts in order to qualify as a small business concern.[343] 13 C.F.R. §§ 121.101 et seq. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register." While we tentatively believe that the foregoing definition of "small business" greatly overstates the number of television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the new rules on small television stations, we did not propose an alternative definition in the

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[343] This revenue cap appears to apply to noncommercial educational television stations, as well as to commercial television stations. See Executive Office of the President, Office of Management and Budget, Standard Industrial Classification Manual (1987), at 283, which describes "Television Broadcasting Stations (SIC Code 4833) as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

IRFA.[344] Accordingly, for purposes of this Report and Order, we utilize the SBA's definition in determining the number of small businesses to which the rules apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to television broadcast stations and to consider further the issue of the number of small entities that are television broadcasters in the future. Further, in this FRFA, we will identify the different classes of small television stations that may be impacted by the rules adopted in this Report and Order.

2. Issues in Applying the Definition of a "Small Business"

As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities to which the rules will apply. Our estimates reflect our best judgments based on the data available to us.

An element of the definition of "small business" is that the entity not be dominant in its field of operation. We were unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the following estimates of small businesses to which the new rules will apply do not exclude any television station from the definition of a small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. We attempted to factor in this element by looking at revenue statistics for owners of television stations. However, as discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the rules may apply may be overinclusive to this extent. The SBA's general size standards are developed taking into account these two statutory criteria. This does not preclude us from taking these factors into account in making our estimates of the numbers of small entities.

With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 C.F.R § 121.104, and its calculations include an averaging process. We do

[344] We have pending proceedings seeking comment on the definition of and data relating to small businesses. In our Notice of Inquiry in GN Docket No. 96-113 (In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses), FCC 96-216, released May 21, 1996, we requested commenters to provide profile data about small telecommunications businesses in particular services, including television, and the market entry barriers they encounter, and we also sought comment as to how to define small businesses for purposes of implementing Section 257 of the Telecommunications Act of 1996, which requires us to identify market entry barriers and to prescribe regulations to eliminate those barriers. The comment and reply comment deadlines in that proceeding have not yet elapsed. Additionally, in our Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996), we invited comment as to whether relief should be afforded to stations: (1) based on small staff and what size staff would be considered sufficient for relief, e.g., 10 or fewer full-time employees; (2) based on operation in a small market; or (3) based on operation in a market with a small minority work force. We have not concluded the foregoing rule making.

not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 C.F.R. § 121.104(d)(1). The SBA defines affiliation in 13 C.F.R. § 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both. 13 C.F.R. § 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 C.F.R. § 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliated based on SBA's definitions, we relied on the data bases available to us to provide us with that information.

3. Estimates Based on Census and BIA Data

According to the Census Bureau, in 1992, there were 1,155 out of 1,478 operating television stations with revenues of less than ten million dollars. This represents 78 percent of all television stations, including non-commercial stations. See 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size, May 1995, at 1-25. The Census Bureau does not separate the revenue data by commercial and non-commercial stations in this report. Neither does it allow us to determine the number of stations with a maximum of 10.5 million dollars in annual receipts. Census data also indicates that 81 percent of operating firms (that owned at least one television station) had revenues of less than 10 million dollars.[345]

We have also performed a separate study based on the data contained in the BIA Publications, Inc. Master Access Television Analyzer Database,[346] which lists a total of 1,141 full-power commercial television stations. We have excluded Low Power Television (LPTV)

[345]Alternative data supplied by the U.S. Small Business Administration Office of Advocacy indicate that 65 percent of TV owners (627 of 967) have less than $10 million in annual revenue and that 39 percent of TV stations (627 of 1,591) have less than $10 million in annual revenue. These data were prepared by the U.S. Census Bureau under contract to the Small Business Administration. U.S. Small Business Administration 1992 Economic Census Industry and Enterprise Receipts Report, Table 2D (U.S. Census Bureau data adopted by SBA). These data show a lower percentage of small businesses than the data available directly from the Census Bureau. Therefore, for purposes of our worst case analysis, we will use the data available directly from the Census Bureau.

[346]BIA Publications, Inc., Chantilly, VA.

stations or translator stations, which will not be subject to the new requirements, from our calculations.[347] It should be noted that, using the SBA definition of small business concern, the percentage figures derived from the BIA data base may be underinclusive because the data base does not list revenue estimates for noncommercial educational stations, and these are therefore excluded from our calculations based on the data base.[348] While noncommercial stations are not subject to the new reporting or recordkeeping requirements adopted in the Report and Order, the new definition (except for the reporting requirements) and the processing guideline will apply to them. The BIA data indicate that, based on 1995 revenue estimates, 440 full-power commercial television stations had an estimated revenue of 10.5 million dollars or less. That represents 54 percent of commercial television stations with revenue estimates listed in the BIA program. The data base does not list estimated revenues for 331 stations. Using a worst case scenario, if those 331 stations for which no revenue is listed are counted as small stations, there would be a total of 771 stations with an estimated revenue of 10.5 million dollars or less, representing approximately 68 percent of the 1,141 commercial television stations listed in the BIA data base.

Alternatively, if we look at owners of commercial television stations as listed in the BIA data base, there are a total of 488 owners. The data base lists estimated revenues for 60 percent of these owners, or 295. Of these 295 owners, 158 or 54 percent had annual revenues of 10.5 million dollars or less. Using a worst case scenario, if the 193 owners for which revenue is not listed are assumed to be small, the total of small entities would constitute 72 percent of owners.

In summary, based on the foregoing worst case analysis using census data, we estimate that our rules will apply to as many as 1,155 commercial and non-commercial television stations (78 percent of all stations) that could be classified as small entities. Using a worst case analysis based on the data in the BIA data base, we estimate that as many as approximately 771 commercial television stations (about 68 percent of all commercial televisions stations) could be classified as small entities. As we noted above, these estimates are based on a definition that we tentatively believe greatly overstates the number of television broadcasters that are small businesses. Further, it should be noted that under the SBA's definitions, revenues of affiliated businesses that are not television stations should be aggregated with the television station revenues in determining whether a concern is small. Therefore, these estimates overstate the number of small entities since the revenue figures on

[347]It should be noted that the Commission has attempted to minimize the burden on small entities by not applying the rules to LPTV stations and television translators. As of June 30, 1996, there were 1,903 LPTV stations and 4,910 television translators licensed in the United States. FCC News Release, Broadcast Station Totals as of June 30, 1996, Mimeo No. 63298, released July 10, 1996.

[348] In the Joint Comments of the Association of America's Public Television Stations and the Public Broadcasting Service (p. 6), it is reported that there are 38 public televisions stations with annual operating budgets of less than $2 million. As of June 30, 1996, there were 364 public television stations licensed. FCC News Release, Broadcast Station Totals as of June 30, 1996, released July 10, 1996.

which they are based do not include or aggregate such revenues from non-television affiliated companies.

It should also be noted that the foregoing estimates do not distinguish between network-affiliated[349] stations and independent stations. As of April, 1996, the BIA data base indicates that about 73 percent of all commercial television stations were affiliated with the ABC, CBS, NBC, Fox, UPN, or WB networks. Moreover, seven percent of those affiliates have secondary affiliations.[350] We assume that compliance with the requirements adopted in the Report and Order will be less burdensome for network affiliates than for independent stations, as the networks may provide some core programming to network affiliates at lower costs than the network affiliates might otherwise be able to obtain. The networks might also otherwise assist with the fulfillment of additional requirements.

4. Alternative Classification of Small Stations

An alternative way to classify small television stations is by the number of employees. The Commission currently applies a standard based on the number of employees in administering its Equal Employment Opportunity ("EEO") rule for broadcasting.[351] Thus, radio or television stations with fewer than five full-time employees are exempted from certain EEO reporting and recordkeeping requirements.[352] We estimate that the total number

[349]In this context, "affiliation" refers to any local broadcast television station that has a contractual arrangement with a programming network to carry the network's signal. This definition of affiliated station includes both stations owned and operated by a network and stations owned by other entities.

[350]Secondary affiliations are secondary to the primary affiliation of the station and generally afford the affiliate additional choice of programming.

[351]The Commission's definition of a small broadcast station for purposes of applying its EEO rule was adopted prior to the requirement of approval by the Small Business Administration pursuant to Section 3(a) of the Small Business Act, 15 U.S.C. § 632(a), as amended by Section 222 of the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 222(b)(1), 106 Stat. 999 (1992), as further amended by the Small Business Administration Reauthorization and Amendments Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187 (1994). However, this definition was adopted after public notice and an opportunity for comment. See Report and Order in Docket No. 18244, 23 FCC 2d 430 (1970).

[352]See, e.g., 47 C.F.R. § 73.3612 (Requirement to file annual employment reports on Form 395-B applies to licensees with five or more full-time employees); First Report and Order in Docket No. 21474 (In the Matter of Amendment of Broadcast Equal Employment Opportunity Rules and FCC Form 395), 70 FCC 2d 1466 (1979). The Commission is currently considering how to decrease the administrative burdens imposed by the EEO rule on small stations while maintaining the effectiveness of our broadcast EEO enforcement. Order and Notice of Proposed Rule Making in MM Docket No. 96-16 (In the Matter of Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include EEO Forfeiture Guidelines), 11 FCC Rcd 5154 (1996). One option under consideration is whether to define a small station for purposes of affording such relief as one with ten or fewer full-time employees. Id. at ¶ 21.

of commercial television stations with 4 or fewer employees is 132 and that the total number of noncommercial educational television stations with 4 or fewer employees is 136.[353]

Size of the station based on the number of employees is only one factor in assessing the impact of the compliance requirements on small stations. For example, as discussed below, the resources that may often be provided from the networks to network affiliates and from program syndicators to broadcasters showing their programming should ease the compliance requirements by providing educational program descriptions which can be used in public information dissemination. Small group-owned stations may also receive similar benefits from their parent companies when programs have been produced or acquired for multiple stations in the group. However, we do not have the necessary information at this time to determine the number of small group-owned stations, either under the SBA's definition or based on those stations that have fewer than five full-time employees.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules.

The rules adopted in the Report and Order require commercial television broadcasters, regardless of size, but not including LPTV or translator stations, to identify programs specifically designed to educate and inform children at the time those programs are aired (at the beginning of the program), in a form that is at the discretion of the licensee, and to provide information identifying such programs and the age groups for which, in the opinion of the broadcaster, they are intended, to publishers of program guides.

Our rules currently require commercial licensees to complete reports containing information about the children's programming they air, including time, date, duration, and description of the programs. These reports may be produced either quarterly or annually at the licensee's discretion. Licensees maintain these reports in their public inspection file.

The new rules will require commercial television licensees to provide a brief explanation in their children's programming reports of how particular programs meet the definition of programming specifically designed to meet children's educational and informational needs that is adopted in the Report and Order. Licensees will be required to produce their children's reports quarterly. For an experimental period of three years, broadcasters will be required to file these reports with the Commission on an annual basis (i.e., four quarterly reports filed jointly once a year). Broadcasters will also be required to separate their children's programming reports from other materials in their public files and to publicize in an appropriate manner the existence and location of the children's programming reports. The Commission will, at a later date, adopt a standardized form for the programming reports. We will also permit, but not require, electronic filing of children's programming

[353]We base this estimate on a compilation of 1995 Broadcast Station Annual Employment Reports (FCC Form 395-B), performed by staff of the Equal Opportunity Employment Branch, Mass Media Bureau, FCC.

reports. Finally, the Commission will, at a later date, revise its license renewal form to reflect the new three hour core programming processing guideline, discussed below.

While licensees remain ultimately responsible for ensuring compliance with our rules, we anticipate that they may be able to refer to information provided by the broadcast networks and program suppliers in assessing the educational and informational purpose of programming. Further, we anticipate that station programming and clerical staff will continue to be able to perform the other reporting and recordkeeping functions required under the rules.

Under the new rules, commercial television licensees will also be required to designate a liaison at the station for children's programming and to include the name and method of contacting that person in the children's programming reports. In order to minimize burdens, the Report and Order exempts noncommercial educational television stations from this requirement. With respect to the liaison, the rules do not require that a new or additional employee be hired to perform this function, and we believe that it is reasonable to require licensees to designate a liaison for children's programming since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibility under the CTA to air children's educational television programming and since licensees are currently required to maintain children's programming reports and letters received from the public in their public inspection file.

To minimize regulatory burdens, the new rules exempt noncommercial educational television stations from the foregoing reporting, filing, and submission requirements and public information initiatives.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered.

In general, we have attempted to keep burdens on television broadcast stations to a minimum, as discussed below. The regulatory burdens we have imposed are necessary to ensure compliance with the CTA.

1. Public Information Initiatives

We adopted the requirements that commercial television broadcasters identify children's educational and informational programs and designate a liaison for children's programming, as well as the revised public file requirements, based on the goal of affording the public sufficient information to play an active role in assuring that the goals of the CTA are met. We will also make information obtained from the children's programming reports available on our Internet World Wide Web site if it is feasible so that it will be accessible by the public. Allowing the public to play an active role will, in turn, allow the Commission to minimize its involvement in evaluating the quality of children's programming and to rely more on the marketplace to achieve the goals of the CTA, thereby minimizing regulatory burdens.

We determined that these information requirements should not impose significant additional burdens on licensees, and, in adopting the rules, the Commission has attempted to minimize regulatory and significant economic burdens on small businesses and facilitate compliance with reporting rules wherever possible.

a. Identification of Core Programming

The burden of the on-air identification requirement on all commercial television broadcast stations, including small stations, is minimized because the form of the identification is at their discretion. The rules adopted provide greater discretion to television stations and are thus less burdensome than if we had adopted a requirement that broadcasters use an icon for such identification, as suggested in the NPRM. Further, such an identification requirement may benefit small stations by affording a potential increase in audience size. An on-air identification requirement will make broadcasters more accountable to the public and further the goal of minimizing the possibility that the Commission would be forced to decide whether particular programs serve the educational and informational needs of children. We note that it is standard practice in the broadcast industry for stations to make various on-air announcements promoting their programming. We further note that under longstanding Commission rules, stations must make station identification and sponsorship announcements. See 47 C.F.R. §§ 73.1201, 73.1212.

b. Program Guides

Television stations currently submit programming information to programming guides, which publish such information without cost to the broadcasters. See ¶ 60 supra. Our current rules do not require broadcasters to provide this information to the guides. However, it has become a well-established practice to provide specialized information about programs, such as which programs are closed captioned for the hearing impaired. Our new rules will require commercial television broadcasters to provide to publishers of program guides information identifying core programs, and the age group for which, in the opinion of the broadcaster, the program is intended.[354] This information will assist parents in finding suitable programs for their children and be useful to parents and others who wish to monitor station performance in complying with the CTA. We recognize that broadcasters cannot require publishers to print this information. The information, however, is more likely to be in the program listings if broadcasters routinely provide it. This requirement is a minor extension of what small stations already do for their standard programming. Stations are not required to purchase advertising space in TV Guide or local TV weekly publications, only to provide information to them. As broadcasters routinely provide such information about their programming to

[354]As described above in Section IV of the Report and Order, we will require that commercial broadcasters indicate the age of the target child audience in their program description.

program guides and designate core programs for their public records, we believe it would require a minimum of effort, but have a major positive effect, for them to do so.

c. Public File Requirements

Our rules currently require commercial television licensees to compile reports, containing information about the children's programming they air, including the time, date, duration, and description of the programs. Licensees maintain these reports in the station's public inspection file. Our new rules will require commercial television licensees to prepare these reports using a standardized format on a quarterly basis. The reports will describe their efforts to comply with the CTA-related programming requirements outlined in this decision. Licensees will be required to provide a brief explanation of how particular programs meet the definition of "core" programming. Commercial television licensees will be required to separate the children's programming reports from the other reports they maintain in their public files.

The impact of this requirement will depend on the specific class into which a small station falls. Network-affiliated stations, regardless of staff size, may have network support in fulfilling aspects of the reporting requirement for the programs that are broadcast by the network. For example, we assume that, in developing the educational and informational programming they furnish to affiliates, networks will have prepared program information about the educational and informational benefits to children that can be disseminated to affiliated stations.[355] Assuming that the network furnishes such material, a small station may be able to rely on it in preparing its programming report, with respect to the network programs that it airs. In addition, program syndicators may also provide the information needed for a small station to complete its children's programming reports with respect to the programs furnished by the syndicator, further lessening any burden on small stations.

A small station that wishes to produce its own children's educational programming will not have the benefit of any such material provided by a network or syndicator in fulfilling the program report requirements. However, assuming a determination of the educational and informational attributes of the program has been made at the pre-production/development stage, additional analysis may not be necessary in preparing the programming report. It is not required, nor should it be necessary, for a small station to hire additional personnel or a children's educational expert to prepare such reports. The Commission considered but specifically rejected such a requirement in order to minimize regulatory burdens on licensees.

[355] See e.g., NBC Comments at 7, 19; NBC Reply Comments at 9 (written articulation of the educational theme or goal of each educational segment furnished to affiliates for inclusion in their children's programming reports); see also ABC Comments at 12 (ABC currently provides to its affiliates a brief explanation of how particular programs meet the definition of educational and informational programming for children).

A number of broadcasters and other commenters requested that the Commission develop a standardized form to facilitate their assembly of children's programming reports, which they are required to do under our current rules. See Report and Order, ¶ 69 and n. 174 supra. So that the reporting burden will be minimized, the Commission will develop a standardized form to be used for preparing the quarterly children's programming reports. We believe that the standardized form will make compliance with the reporting requirements easier and less burdensome for all entities, including small entities. See Report and Order, ¶¶ 69-72.

With regard to licensees publicizing the availability and location of the programming reports, we believe that this requirement should not be burdensome on small entities because we do not prescribe the manner in which licensees are to publicize the availability and location of the reports, but allow the licensees flexibility to do so in an appropriate manner. Therefore, licensees may choose to fulfill the requirement in a manner that is least burdensome to them, provided they do so in an appropriate manner.

Our new rules also require commercial television licensees to designate a liaison for children's programming and to include the name and method of contacting that individual in the station's children's programming reports.[356] Licensees already employ sufficient staff in order to maintain the children's programming reports[357] and letters received from the public in their public inspection files, as required by our current regulations.[358] Thus, we do not expect that the new requirement for designation of a liaison will impose a significant additional burden on licensees. The rules do not require that a new or additional employee be hired to perform this function, and we believe that it is reasonable to require licensees to designate a liaison for children's programming since someone at each station must, as a practical matter, be responsible for carrying out the broadcaster's responsibility under the CTA to air children's educational television programming. In addition, our rules place no limitations on the licensee's discretion in assigning the liaison function and determining how it will be carried out.

2. Definition of "Specifically Designed" Programming

The CTA requires the Commission to consider the extent to which a broadcaster has "served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." We determined that we should adopt a definition of programming specifically designed to serve children's educational and informational needs (or "core programming") because our current

[356] As noted earlier, noncommercial educational television licensees are exempt from this requirement.

[357] NPRM, 10 FCC Rcd at 6322; 47 C.F.R. § 73.1202.

[358] Id. at § 73.1202. Commercial stations are required to maintain a number of other reports, records, and applications in their public inspection file as well. See id. at § 73.3526.

definition is very broad, does not distinguish between general audience/entertainment programs and programs that are specifically designed to educate and inform, and does not provide licensees with sufficient guidance regarding their obligation to air "specifically designed" programming as required by the CTA. The definition is designed to be sensitive to our concerns that the rules be explicit, clear, simple, and fair and that they afford clear guidance to licensees as to their obligations under the CTA.

In adopting the definition, we attempted to minimize regulatory burdens and economic impact on small entities. For example, the Commission rejected a proposal advanced by several commenters that licensees be required to consult with educational experts in order for a program to qualify as core programming. Report and Order, ¶ 90. The Commission rejected this proposal in order to minimize burdens on our licensees. An element of our core programming definition is the requirement that commercial television licensees specify in writing in their children's programming report the educational and informational objective of a core program as well as its target child audience. While we recognize this element of the revised definition may impose an additional paperwork burden on commercial licensees, we conclude that the burden is outweighed by the benefits of the proposal. See Report and Order, ¶¶ 91-95. The description of a program's educational objective does not have to be lengthy, and we do not require that the description be prepared by an expert.

3. Processing Guideline

We adopt a three-hour per week safe harbor processing guideline. A processing guideline is consistent with the text of the CTA and with the First Amendment, and we conclude that our current ad hoc approach provides inadequate guidance to licensees and Commission staff. Under the new processing guideline adopted, we would permit staff approval of the children's programming portion of the renewal application where the three-hour benchmark is met. A measure of flexibility is afforded to licensees, including small businesses, since a licensee falling somewhat short of this benchmark could still receive staff approval based on a showing that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. In this regard, specials, PSAs, short-form programs and regularly scheduled non-weekly shows with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Renewal applications that do not meet these criteria will be referred for consideration to the Commission, where they will have a full opportunity to demonstrate compliance with the CTA. Such applicants may be able to demonstrate compliance, for example, by relying in part on sponsorship of core educational and informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts that enhance the value of children's educational and informational television programming. A processing guideline is consistent with the text of the CTA that the Commission "consider the extent" to which licensees serve the "educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs." Report and Order, ¶¶ 120-130.

In adopting this guideline, the Commission seeks to minimize the regulatory burdens and economic impact on licensees, including small businesses, by delegating authority to the Mass Media Bureau to approve Category A or Category B renewal applications. See Report and Order, ¶¶ 120-34. Additionally, the Commission allows broadcasters scheduling flexibility by adopting a per-week rather than a per-day safe harbor and by permitting the three-hour benchmark to be averaged over a six-month period, and further attempts to minimize the economic impact by allowing repeats and reruns of core programming to be counted toward fulfillment of the three-hour guideline.

With respect to network affiliates, we expect that networks, as they have in the past, will provide programming and compliance information to their affiliates so that, regardless of revenues, the burden on network-affiliated stations will be minimized. Indeed, as noted in ¶ 132 of the Report and Order, Westinghouse Electric Corporation has announced that it will provide three hours per week of children's educational programming over the CBS network and on its owned and operated stations by the fall 1997 season. Further, we assume that the three-hour per week guideline will not be burdensome because, as the National Association of Broadcasters ("NAB") reports, broadcasters today air an average of more than four hour per week of total educational and informational programming under the CTA. See Report and Order, ¶ 40. Even though that figure may be inflated by the inclusion of some programming that may not qualify under the definition of core programming, it suggests that a three-hour processing guideline is a reasonable level that should not be particularly difficult for broadcasters to achieve.

The Commission considered but did not adopt two alternative options to the processing guideline: (1) Commission monitoring of the amount of educational and informational programming on the air during a period of time following the adoption of measures to improve the flow of programming information to the public and a definition of core programming; and (2) adoption of a programming standard that would require broadcasters to air a specified average number of hours of programming specifically designed to serve the educational and informational needs of children. The rule adopted furthers the goal of making the Commission's rules and processes as clear, efficient, and fair as possible, while affording licensees discretion to augment their core programming responsibility with program sponsorship or other exceptional programming efforts.

The Commission concludes that the option chosen strikes the appropriate balance between the need for certainty and flexibility in enforcing the CTA and is thus preferable to both the monitoring and programming standard proposals set forth in the NPRM. It should be noted that the option chosen, a processing standard, is less burdensome and affords licensees, including small businesses, greater flexibility than if the Commission had imposed a programming standard. Based on the record, the Commission does not believe that three hours of educational programming would be difficult for most broadcasters to achieve. While mere monitoring might be less burdensome than a processing guideline, the Commission concludes in the Report and Order that it is inadvisable to process renewals under the CTA without some quantitative guidelines that are published in advance to provide licensees notice as to means by which they can fulfill their CTA obligations.

Finally, the Commission will revise its license renewal form to reflect the new three hour core programming processing guideline. To minimize the regulatory burden and economic impact on broadcasters, including small businesses, they will be able to demonstrative compliance either by checking a box and providing supporting information indicating that they have aired an average of three hours per week of core programming or by showing that they have aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of core programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of core programming. In revising the renewal form, we will seek to minimize the reporting burden on licensees, including small businesses, by, for example, permitting them to rely on the children's programming reports they have previously prepared.

F. Report to Congress

The Secretary shall send a copy of this Final Regulatory Flexibility Analysis along with this Report and Order in a report to Congress pursuant to Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, codified at 5 U.S.C. Section 801(a)(1)(A). A copy of this FRFA will also be published in the Federal Register.

APPENDIX B

Part 73 of Title 47 of the U.S. Code of Federal Regulations is amended as follows:

Part 73 RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 303, 334.

2. Section 73.671 is amended by removing the Note following the section, revising paragraph (a), and by adding paragraph (c) and Notes 1 and 2 to read as follows:

§ 73.671 Educational and informational programming for children.

(a) Each commercial and noncommercial educational television broadcast station licensee has an obligation to serve, over the term of its license, the educational and informational needs of children through both the licensee's overall programming and programming specifically designed to serve such needs.

* * * * *

(c) For purposes of this section, educational and informational television programming is any television programming that furthers the educational and informational needs of children 16 years of age and under in any respect, including the child's intellectual/cognitive or social/emotional needs. Programming specifically designed to serve the educational and informational needs of children ("Core Programming") is educational and informational programming that satisfies the following additional criteria:

(1) It has serving the educational and informational needs of children ages 16 and under as a significant purpose;

(2) It is aired between the hours of 7:00 a.m. and 10:00 p.m.;

(3) It is a regularly scheduled weekly program;

(4) It is at least 30 minutes in length;

(5) The educational and informational objective and the target child audience are specified in writing in the licensee's Children's Television Programming Report, as described in §73.3526(a)(8)(iii); and

(6) Instructions for listing the program as educational/informational, including an indication of the age group for which the program is intended, are provided by the licensee to publishers of program guides, as described in §73.673(b).

NOTE 1 to §73.671: For purposes of determining under this section whether programming has a significant purpose of serving the educational and informational needs of children, the Commission will ordinarily rely on the good faith judgments of the licensee.

Commission review of compliance with that element of the definition will be done only as a last resort.

NOTE 2 to §73.671: The Commission will use the following processing guideline in assessing whether a television broadcast licensee has complied with the Children's Television Act of 1990 ("CTA"). A licensee that has aired at least three hours per week of Core Programming (as defined in paragraph (c) of this section and as averaged over a six month period) will be deemed to have satisfied its obligation to air such programming and shall have the CTA portion of its license renewal application approved by the Commission staff. A licensee will also be deemed to have satisfied this obligation and be eligible for such staff approval if the licensee demonstrates that it has aired a package of different types of educational and informational programming that, while containing somewhat less than three hours per week of Core Programming, demonstrates a level of commitment to educating and informing children that is at least equivalent to airing three hours per week of Core Programming. In this regard, specials, PSAs, short-form programs, and regularly scheduled non-weekly programs with a significant purpose of educating and informing children can count toward the three hour per week processing guideline. Licensees that do not meet these processing guidelines will be referred to the Commission, where they will have full opportunity to demonstrate compliance with the CTA (e.g., by relying in part on sponsorship of core educational/informational programs on other stations in the market that increases the amount of core educational and informational programming on the station airing the sponsored program and/or on special nonbroadcast efforts which enhance the value of children's educational and informational television programming).

3. Section 73.672 is deleted and reserved.

4. New Section 73.673 is added to read as follows:

§ 73.673 Public information initiatives regarding educational and informational programming for children.

(a) Each commercial television broadcast licensee shall identify programs specifically designed to educate and inform children at the beginning of the program, in a form that is in the discretion of the licensee.

(b) Each commercial television broadcast station licensee shall provide information identifying programming specifically designed to educate and inform children to publishers of program guides. Such information shall include an indication of the age group for which the program is intended.

5. Section 73.3526(a)(8)(iii) is revised to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) * * *

(8)(i) * * *

(ii) * * *

(iii) For commercial TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in §73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. Licensees shall publicize in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, i.e., four quarterly reports filed jointly each year, preferably in electronic form. These Reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

6. Section 73.3500 is amended by adding entry 398 in numerical order to read as follows:

§73.3500 Application and Report Forms.

* * * * *

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APPENDIX C

The following parties filed comments in response to the FCC's NPRM:

Initial Comments

Capital Cities/ABC, Inc.

American Academy of Pediatrics

Apple Computer, Inc.

Association of America's Public TV Stations and PBS

Association of Local Television Stations, Inc.

CBS Inc.

Congressman Michael Castle

Center for Educational Priorities

Caucus for Producers, Writers & Directors

Children's Broadcasting Corp.

Copley Entertainment, Inc.

Center for Media Education

Channel 6, Inc.

Children Now

Children's Defense Fund and Black Community Crusade for Children

The Children's Television Resource and Education Center

Children's Television Workshop

Children's TV for the '90s

President Clinton

Corporation for Public Broadcasting

Cosmos Broadcasting, Cox Broadcasting, First Media TV, Paxson Communications Corp., and River City Broadcasting

Curators of the University of Missouri

Ronald E. Davis

Donrey Media Group

Fox Broadcasting Company, Fox Children's Network, and Fox Affiliates Association

Golden Orange Broadcasting Co., Inc.

August E. Grant

Great Trails Broadcasting Corp.

Prof. James T. Hamilton

Aletha C. Huston and John C. Wright

Larry Irving

KIDSNET, Inc.

Dale Kunkel

Senator Joseph Lieberman

Congresswomen Nita Lowey and Constance Morella

Maine Broadcasting Television Co.

Congressman Edward Markey

The Media Institute

Meredith Corporation

National Association of Broadcasters

National Broadcasting Company, Inc.

National Coalition on TV Violence

NATPE International

National Broadcast Association for Community Affairs

Newton N. Minow and Craig L. LaMay

Office of Communication United Church of Christ

OKTV (Our Kid's TV) Foundation

Senators Jeff Bingaman, Paul Simon, Paul Sarbanes, John Breaux, Patty Murray, Wendell Ford, Daniel Akaka, Bob Graham, Richard Bryan, Herb Kohl, Howell Heflin, Dale Bumpers, Ernest Hollings, Olympia Snowe, John Kerry, Robert Byrd, Harry Reid, Jay Rockefeller, Barbara Boxer, Tom Harkin, Daniel Inouye, John Glenn, Claiborne Pell, David Pryor, Bennett Johnston, and Paul Wellstone

Arthur D. Sheekey

Tribune Broadcasting Company

The Walt Disney Company

Warner Bros. Television Network, Warner Bros. and Time Warner, Inc.

Westinghouse Broadcasting Company

U.S. Catholic Conference

Reply Comments

Capital Cities/ABC, Inc.

American Psychological Association

Association of America's Public Television Stations and PBS

Association of Local Television Stations, Inc.

Center for Educational Priorities

Center for Media Education

Children's Television for the '90s

Children's Television Workshop

Henry Geller

Dale Kunkel

Edward Markey

Monroe E. Price & Michael I. Meyerson

National Association of Broadcasters

National Broadcasting Company, Inc.

Named State Broadcaster Associations

National Association of Black Owned Broadcasters

Office of Communication United Church of Christ

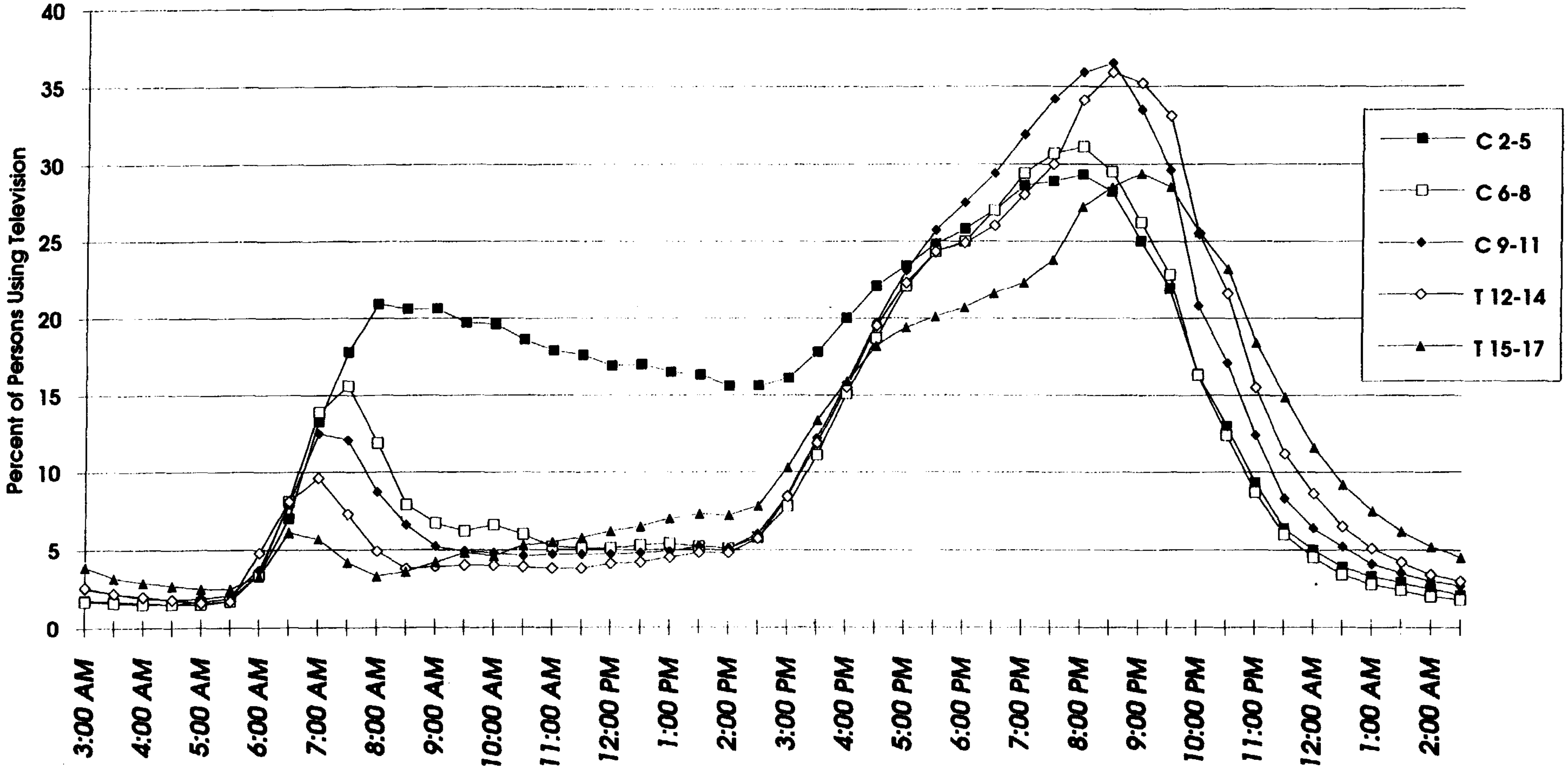
Dorothy G. and Jerome L. Singer

Ellen A. Wartella

APPENDIX D

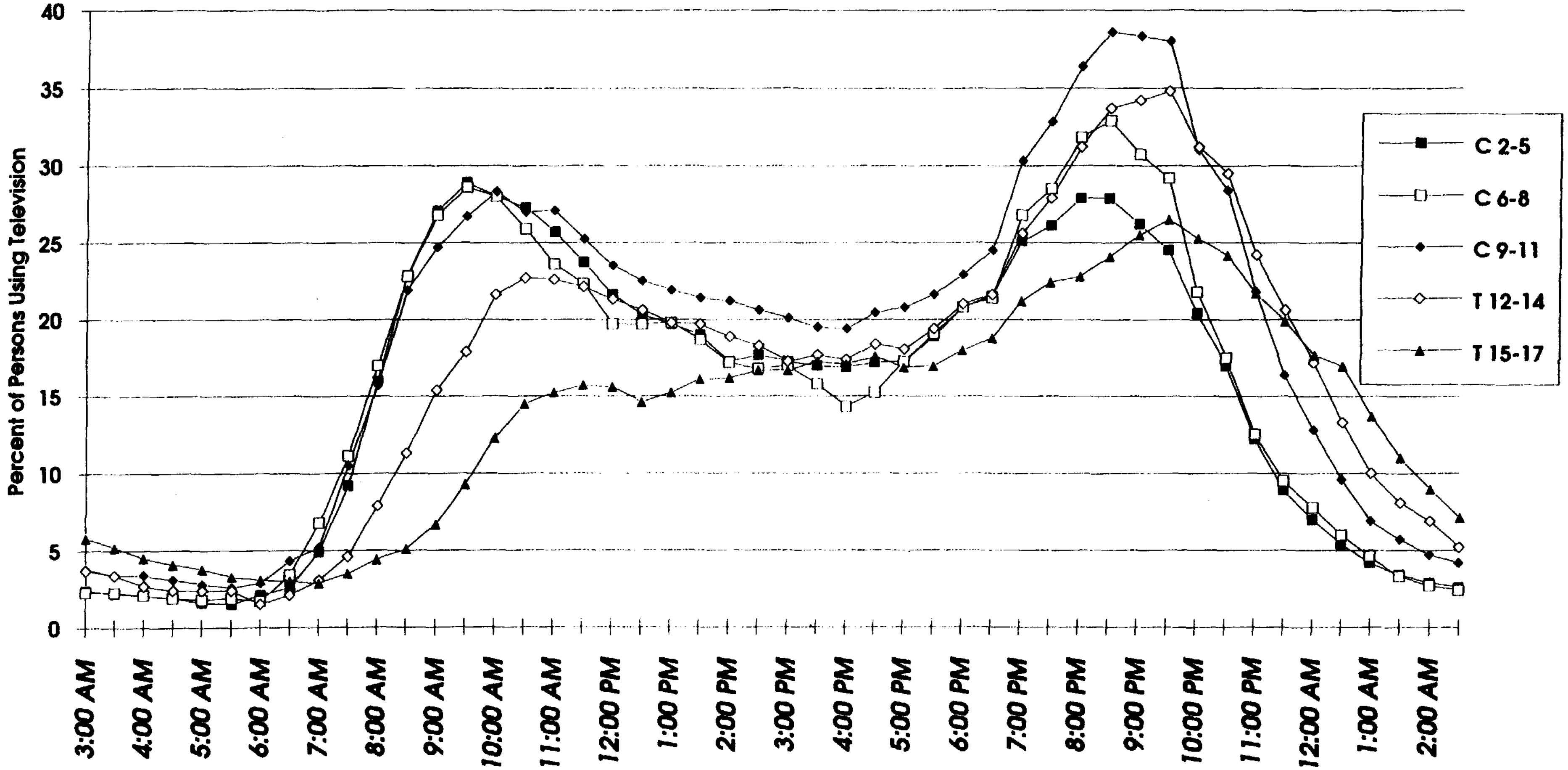
TV Usage By Children and Teens

TV Usage: Children and Teens, Monday - Friday



Source: Nielsen's National Audience Demographics, Vol. 1, November 1995

TV Usage: Children and Teens, Saturday



Source: Nielsen's National Audience Demographics, Vol. 1, November 1995